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November 1, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 13, 2007

Case Number: TSO-0512

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.^{2/} The Individual's access authorization was denied by DOE on June 4, 2007, on the basis that the individual failed to provide accurate information on his November 2005 Questionnaire for National Security Position (QNSP). After reviewing the evidence before me, I find the Individual's access authorization should not be granted.

I. Background

The Individual did not list any arrests or outstanding debts on the QNSP he signed on November 9, 2005. On September 13, 2006, the Individual was interviewed by the Local Security Office (LSO). During the interview, the Individual admitted to a number of arrests and outstanding debts that he had not revealed on his QNSP. Among the arrests omitted by the Individual were a 1996 Unruly and Aggravated Assault charge where he had originally been charged with Driving Under the Influence; a 1996 Destruction of Property, Underage Consumption of Alcohol, and Reckless Endangerment; and a 2001 Domestic Violence, Public Intoxication, Resisting Arrest, and Disturbing the Peace. On June 4, 2007, the LSO issued a Notification Letter to the Individual, indicating the Individual's failure to truthfully complete his QNSP created a substantial doubt as to the Individual's eligibility

^{1/} 10 C.F.R. Part 710.

^{2/} 10 C.F.R. § 710.5(a).

for an access authorization under Criteria F.^{3/} Criterion F refers to information indicating that an individual “deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization.”^{4/}

Upon receipt of the Notification Letter, the Individual requested a hearing. The OHA Acting Director appointed me as the Hearing Officer in this case.^{5/} I convened a hearing in this matter.^{6/}

At the hearing, the Individual represented himself with help from his union representative. He offered his own testimony; the testimony of his union representative, a co-worker; and his supervisor. The Individual entered one exhibit into the record, and the LSO entered seven exhibits into the record.

II. *The Hearing*

A. The Individual

The Individual testified that when he completed his QNSP, he misunderstood the question about his arrests. Hearing Transcript at 21 (Tr.). According to the Individual, his employer told him to submit information about any arrests which had occurred within the past seven years. Tr. at 21. He did not understand that if alcohol were involved in an arrest, the question on the QNSP required him to disclose all arrests, no matter when the arrest occurred. Tr. at 21-22. The Individual further testified that he had forgotten about some of his arrests until the Personnel Security Specialist reminded him of the details during the Personnel Security Interview (PSI). Tr. at 22.

At the hearing, the Individual could not explain why he failed to list his overdue financial obligations on the QNSP. Tr. at 23. He testified that he was aware of those obligations. Tr. at 23. The Individual testified that he paid off all his outstanding debts soon after his PSI. Tr. at 23.

^{3/} 10 C.F.R. § 710.8(f).

^{4/} *Id.*

^{5/} 10 C.F.R. § 710.25(a), (b).

^{6/} 10 C.F.R. § 710.25(g).

The Individual testified that he prepared two drafts of his QNSP, because his employer lost the first draft that he provided. Tr. at 20. His mother helped him complete both forms because he is not particularly adept at recalling specific dates. Tr. at 20. He gave the second draft to his employer. His employer had his QNSP typed. He signed the typed QNSP on November 9, 2005. The Individual testified that he could not recall whether he provided additional information on the draft QNSP he provided to his employer. Tr. at 33.

B. The Union Representative

The Union Representative testified that the Individual is a “really great guy.” Tr. at 8. The Union Representative testified that when he turned in his own draft QNSP to his employer, his employer had it re-typed. The Union Representative testified that after his QNSP was re-typed he was given the last page to sign. Tr. at 12. When the Union Representative was interviewed at his PSI, he realized information on his QNSP did not accurately reflect the information he provided on his draft QNSP. Tr. at 15.

C. His Supervisor

The Individual’s supervisor testified that he has known the Individual approximately two years. Tr. at 15. The supervisor testified that the Individual is a good worker and a good team player. Tr. at 16. He believes the Individual now recognizes his responsibilities and has matured. Tr. at 16.

III. Standard of Review

Under Part 710, DOE may deny an individual’s access authorization where “information is received that raises a question concerning an individual’s continued access authorization eligibility.”¹⁷ After a question concerning an individual’s eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” See 10 C.F.R. § 710.27(a).

In considering the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in the regulations: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral

¹⁷ 10 C.F.R. § 710.10(a).

changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. 10 C.F.R. § 710.7(c).

IV. Findings and Conclusions

The Individual did omit information from his QNSP and those omissions raise a security concern. After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." See 10 C.F.R. § 710.27(a). The DOE security program is based on trust, and when a person breaches that trust by misrepresenting, falsifying, or omitting information during the access authorization process, it is difficult for the DOE to trust that person. See *Personnel Security Hearing* (Case No. VSO-0099), 26 DOE ¶ 82,759 (1996), (*affirmed* by OSA, 1996). The DOE must rely on persons who are granted access authorization to be honest and truthful; this important principle underlies the criterion set forth in 10 C.F.R. § 710.8(f). See *Personnel Security Hearing* (Case No. VSO-0121), 26 DOE ¶ 82,775 (1996), *aff'd*, *Personnel Security Review*, 26 DOE ¶ 83,014 (1997), (*affirmed* by OSA, 1997).

The Individual testified that he does not know why he did not list his debts on the QNSP. He also testified that he recalled his three alcohol-related arrests, but did not understand that those alcohol-related arrests that occurred more than nine years prior to the date of the QNSP needed to be included on the QNSP. His supervisor supported this testimony that he found the instruction for the QNSP to be confusing. He testified that it was unclear "how far back [the Individual] needed to go on some of his history." Tr. at 16-17. The Union Representative confirmed, "I was unsure about how far . . . [I should] go back." Tr. at 11. However, the Individual provided no support for his claim that his employer told him that he was only required to report alcohol-related arrests that occurred in the last seven year.

The Individual also testified that the QNSP he signed on November 9, 2005, was not the form he completed; however, he could not remember how he answered the questions on the draft form he prepared. Even if the Individual answered the questions truthfully on the QNSP that he prepared, there is no doubt that the Individual failed to provide correct information on the typed QNSP he signed. For instance, the last page of the QNSP contains false information about his outstanding debts. When asked both during the hearing and the PSI why he did not answer the questions truthfully, he testified that he just made a mistake. I find that the concern raised by the Individual's failure to provide accurate information on his November 2005 QNSP has not been mitigated by the Individual's statements that he did not understand the question about alcohol-related arrests and his statements that his failure to provide information on his overdue financial obligations was a mistake. *Personnel Security Hearing* (Case No. TSO-0443), 29 DOE ¶ 83,069 (2007);

Personnel Security Hearing (Case No. VSO-0281), 27 DOE ¶ 82,821 (1999), *affirmed*, 27 DOE ¶ 83,030 (OHA April 10, 2000), *terminated* (OSA May 30, 2000); *Personnel Security Hearing* (Case No. VSO-0099), 26 DOE ¶ 82,759 (1996), (*affirmed* OSA 1996).

V. *Conclusion*

I find that Criterion F security concern regarding the Individual's eligibility for a security clearance has not been mitigated. Accordingly, the Individual has not shown that granting his access authorization would not endanger the common defense and security, and granting his access authorization would be inconsistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should not be granted. The Individual may seek review of this decision by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: November 1, 2007